have never done anything to us." I have listened as political leaders commented that "this shows you this country is in trouble," and that "political assassination is becoming as American as apple pie," and that our country "is in really great danger when those—differing—voices can't be heard."

This is an assessment of the situation which might have been justifiable in the heat of the moment when a public official is killed and there is some evidence that it might be a plot. It is an assessment which no sound thinking person should make today, even under stress, unless he deliberately seeks to infect the country with an unwarranted sense of corporate guilt for political purposes.

For the truth of the matter is that the previous assassinations have all been at the hands of deranged individuals. As a society we bear no more guilt for their acts than for the acts of Richard Speck or the skyjackers, or any other unstable individual whose own torment leads him to acts of desperation.

I, too, believe we should continue to search for ways to minimize the opportunity or incentive to commit such crimes against our unheralded citizens as well as our national leaders.

But we must keep our perspective. We must remember our history: That an assassination attempt was made on Andrew Jackson's life in the first quarter of the 19th century; that in 1856 a Member of Congress beat Senator Charles Sumner senseless on the floor of the Senate and crippled him for life; that a madman killed President Lincoln in 1860; that another madman assassinated President Garfield in 1881 and still another took the life of President McKinley in 1901.

Eleven years later an assassination attempt seriously wounded President Theodore Roosevelt and others of his party while he campaigned for the presidency. In 1935 an assassin took the life of Louisiana Governor Huey P. Long. In 1954 there was a vicious attack on Members of the House of Representatives, several of whom were seriously wounded; and an attempt was also made to assassinate President Truman. Only 9 years separated that attack from the killing of President Kennedy, and no more than 25 years have separated any of the attacks mentioned.

Further, I do not set this forth as an exhaustive summary of such crimes or attempted crimes against political figures. Hardly a presidential election has gone by that some private citizen has not died in a quarrel over politics.

But we do not and must not attribute these individual acts to a whole Nation.

If anything contributes to the atmosphere that causes such acts it is the politics of confrontation in times of severe testing. If there is any lesson here, it is for the press and politicians to use the utmost discretion in inflaming passions for political purposes.

S. 1438—PROTECTION OF THE PRIVACY AND OTHER RIGHTS OF EXECUTIVE BRANCH EMPLOYEES

Mr. ERVIN. Mr. President, last December, the Senate by unanimous consent gave its approval for the third time to S. 1438, a bill to protect the constitutional rights of executive branch employees and prohibit unwarranted governmental invasion of their privacy.

The bill is now pending before the House Post Office and Civil Service Committee. That committee also has on its agenda H.R. 11150, an amended version of S. 1438 reported from the Employee Benefits Subcommittee presided over by Representative JAMES HANLEY. H.R. 11150 is sponsored by Representatives HANLEY, BRASCO, UDALL, CHARLES H. WILSON, GALIFIANAKIS, MATSUNAGA, and MURPHY of New York.

Since it was first introduced in 1966 in response to complaints raised during the Kennedy and Johnson administrations, the need for this bill has been self evident to everyone but the White House and some of those who do its political bidding in the civil service.

Its bipartisan nature is obvious from the fact that in three Congresses more than 50 Senators cosponsored it, and an overwhelming majority of the Senate approved it each time.

The history of the fight for enactment of this legislation is set out in an illuminating article written by Robert M. Foley and Harold P. Coxson, Jr., in volume 19 of the American University Law Review. Although the article discusses the bill as S. 782 in the 91st Congress, that version was identical to S. 1438 as passed by the Senate.

The authors have reservations about certain inadequacies of the bill, which I confess I share, but these are the results of compromises thought necessary to obtain passage. They also believe the bill does not go far enough in meeting other serious due process problems often encountered by individuals in their Federal employment. There are, I agree, major omissions in the statutory guarantees of the constitutional rights of these citizens and the authors define them well. As a practical matter, however, one piece of legislation cannot effect all of these changes. I believe we must begin with the passage of S. 1438.

I wish to offer the observation that a great deal of careful legislative drafting is reflected in the balance S. 1438 achieves between the first amendment rights of individuals and the needs of government as an employer. It is my sincere hope that the balance so carefully developed over a 5-year period will not be disturbed as the bill makes its way toward passage.

The authors conclude their analysis with these observations, which I commend to the attention of Members of Congress interested in protecting the right of privacy of all Americans:

> There is no question of greater importance to a free society than that of defining the right of privacy. This right is the most important pillar of freedom. The framers of the Constitution, with a keen awareness of the case with which tyrannous power can be used to erode freedom had this right clearly in mind as they wrote that citizens should be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . ." In fact, the heart of the Bill of Rights is predicated upon this right. In this light one must view the governmental incursions into this constitutionally protected area. To allow encroachments upon the right to privacy of federal employees within the framework of free society may lead to an irrevocable disintegration of the right to privacy for all.
>
> The Court has been able to define some areas where privacy is protected, but this is not enough. There is no definitive guideline for such an interpretive process. The time is ripe for Congress to begin a comprehensive definition of this right, since this process obviously cannot be achieved entirely through the courts. The guideline must come from Congress, which is the only government body charged with expressing the common will of society. S. 782 appears to be a good stepping stone.

Mr. President, I ask unanimous consent that the article, entitled "A Bill to Protect the Constitutional Right to Privacy of Federal Employees," be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the American University Law Review]

S. 782—A BILL TO PROTECT THE CONSTITUTIONAL RIGHT TO PRIVACY OF FEDERAL EMPLOYEES

LEGISLATIVE HISTORY

A State which dwarfs its men, in order that they may be more docile instruments in its hands even for beneficial purposes—will find that with small men no great thing can really be accomplished. . . .[1]

Legislative attention has recently been focused on the unwarranted invasions of privacy and restrictions on liberty perpetrated by the Federal Government against its nearly three million civilian employees. S. 782,[2] recently proposed in the 91st Congress, addresses the question posed by the philosopher John Stuart Mill a little over a century ago: What are the limits of legitimate interference with individual liberty?[3] Today, expanding federal activities and increasing reliance on technological innovations have extended the traditional limits to the point that further interference will render "individual liberty" a hollow phrase. Although occasional encroachments on traditional areas of liberty and privacy might be justified by the overriding interests of society,[4] there is a need to periodically reexamine the extent to which such encroachments will be sanctioned. "There is once again serious reason to suggest that the law must expand its protection if man's traditional freedoms are to be preserved."[5]

S. 782 is a legislative atempt to protect federal employees from specific violations of their constitutional rights[6] and to provide a statutory basis for the redress of such violations.[7] The major emphasis of the bill is the protection of federal employees from unwarranted invasions of privacy by government officials. This article will demonstrate the need for S. 782, analyze its provisions, and measure its effectiveness.

For the past five congressional sessions, violations of federal employee rights have been the subject of "intensive hearings and investigation" by the Subcommittee on Constitutional Rights of the Senate Judiciary Committee.[8] As a result of numerous complaints from civil servants,[9] the Subcommittee initiated legislataive hearings in June, 1965, on "Psychological Tests and Constitutional Rights."[10] Following these hearings, the Chairman of the Subcommittee, Senator Sam J. Ervin, Jr. (D.-N.C.), wrote to then President Lyndon B. Johnson:

> "The invasions of privacy have now reached such alarming proportions and are assuming such varied forms that the matter now demands your immediate and personal attention."[11]

Footnotes at end of article.

But instead this impounded disaster now makes it possible to release 10,000 to 15,000 cubic feet a second more at Gavins Point on the Nebraska-South Dakota state line than in the early 1960s when the huge lakes were still filling. It is difficult now to recall the sharp disputes of those years between the various water interests over priorities. Now there is plenty for all, especially with a mountain snowpack still largely in place at 130 per cent of normal depth.

These big Pick-Sloan lakes cost several hundreds of millions of dollars. But they are returning that investment lavishly—to say nothing of the outdoor recreation they provide for millions of visitors. They will be there to do the flood-stopping job next year or whenever these same conditions develop. As one backer of these much-maligned "pork barrel" river projects asserted, "If this is pork, I'll take another helping."

INAUGURATION OF GENERALISSIMO CHIANG KAI-SHEK FOR FIFTH TERM AS PRESIDENT OF REPUBLIC OF CHINA

Mr. DOMINICK. Mr. President, on May 20, Generalissimo Chiang Kai-shek will be inaugurated to his fifth term as President of the Republic of China. Over the years, Chiang has brought the island of Taiwan tremendous peace, growth, and prosperity—progress rivaled by few in the developing nations of the world.

The past year has been a turbulent and confusing one for the Republic of China. Many changes, including expulsion from the United Nations, have caused some fears and doubts in the minds of the people of Taiwan as to just what the United States commitment to their country will be in years to come.

I have reiterated my strong support and admiration for the people of Taiwan many times in the last few months, and I am sure that all Senators join me in expressing once again our greatest friendship and admiration for the people of the Republic of China and their President on the occasion of his inauguration.

UPPER COLORADO RIVER BASIN AUTHORIZATION

Mr. MOSS. Mr. President, on May 10, the senior Senator from Wisconsin (Mr. PROXMIRE) commented on the passage of H.R. 13435, a bill to increase the authorization for appropriations for continuing work in the Upper Colorado River Basin by the Secretary of the Interior.

The purpose of the bill was to provide sufficient funds to complete the construction of the Upper Colorado River Basin project which was authorized to be constructed by the act of April 11, 1956 (70 Stat. 105). The original authorization provided $760 million for the work, including the major storage reservoirs which now control the widely varying flows of the Colorado River and several water supply projects as well which utilize a part of the water made available by the storage.

The Senator from Wisconsin stated that the Senate Committee on Interior and Insular Affairs held no hearings on this measure. I wish to inform the Senate that while the Senator is correct that the committee held no hearings on H.R. 13435, this bill was not pending before the Senate at that time. But the Subcommittee on Water and Power Resources held a hearing on April 12, on S. 3287 and S. 3283, Senate companion bills which were identical to H.R. 13435 as introduced.

I wish to assure Senators that the implication that insufficient study was given to this legislation is particularly unwarranted. The Interior Committees of both Houses have had close and continuing associations with the Upper Colorado River Basin project since the exhaustive consideration given to it before it was authorized in 1956. There have since been a number of additional participating projects considered for either study of construction, each involving a review of the financial and economic status of the storage project and, of course, the whole matter was reviewed in great depth when the Congress was considering the Colorado River Basin Project Act of 1968 (82 Stat. 885).

The authorizing act of 1956 (70 Stat. 105) requires the Secretary of the Interior to report to the Congress annually on the status of the Colorado River storage project and participating projects. The 15th of these annual reports was transmitted to the President of the Senate on December 28, 1917, and is, of course, available to any interested Senator. I am sure my colleagues will find it to be a comprehensive and detailed accounting of the financial aspects of the project as well as a statement of the diverse and impressive benefits which the project already is providing to our Nation. I am pleased to report that the project already has returned more than $20 million to the Treasury although many of the revenue producing features are still under construction. Moreover, construction funds for storage and power production is repaid with interest to the U.S. Treasury. These funds are a prudent investment, not a nonrecoverable expenditure.

Furthermore, the Colorado River Basin Project Act of 1968 requires the Secretary to report annually to the Congress on the operation of the major reservoirs on the Colorado River system. My colleagues will find that the report for the 1971 operations and 1972 projected operations is an informative document including discussions of river regulation, water use, and environmental measures, among other items, on a reservoir-by-reservoir basis.

The Interior Committee, therefore, came to the consideration of H.R. 13435 and its companion bills with considerable current knowledge of the situation and insights into the significant issues.

I am sure that Senators will agree that the value of legislative hearings are not always measured by their length.

The Senator from Wisconsin also made quite a point of the fact that there was no new benefits to cost analysis of each of the projects in the report on the bill. Of course there was not. The feasibility of each of the projects was carefully evaluated when the projects were originally authorized in 1956. It is an unpardonable delay that they are still waiting to be built—some 16 years after authorization. We should get on with the job.

NEED FOR STRONG EXPORT ARM IN MARKETS OF THE WORLD

Mr. TOWER. Mr. President, I am pleased that the Senate has taken action to delete from S. 3526, the Foreign Relations Authorization Act of 1972, the provision which would have reduced overseas personnel of the Department of Agriculture.

Agricultural exports were worth more than half a billion dollars—$553.9 million—to Texas farmers and ranchers last fiscal year, and that is important to them and also to the merchants, the implement dealers, and to others in the Main Street economies of the Lone Star State.

Those exports are important, too, to the ports of Texas, which are part of the gulf complex through which the bulk of our exports of corn and soybeans move.

We have much to gain from a vigorous and expanding agricultural export position. Right now, we are working to recoup the losses to Texas in agricultural exports and shipping revenues suffered in the dock strike of last October and November.

We need a strong export arm in the markets of the world, and that is what the Department of Agriculture is providing. For these reasons, I commend the Senate for the adoption of the amendment of the Senator from Oklahoma (Mr. BELLMON).

CRIMES OF VIOLENCE AGAINST POLITICAL FIGURES

Mr. CURTIS. Mr. President, I am deeply shocked and grieved, as I know every American citizen of good will is shocked and grieved, at the horrible crime of violence committed last Monday against Governor Wallace. My prayers have been and continue to be with Governor Wallace, his family, his doctors, and the others who were wounded in this senseless attack. I earnestly pray for the Governor's full recovery.

I feel it is equally important to add that my prayers go out for the soul of the young man who perpetrated this deed. It was the act of an individual who must face the consequences. That point must be made and reiterated often. I am deeply concerned over the tendency to attribute to the act, as to the horrible killings of President Kennedy, Senator Robert Kennedy, and Dr. Martin Luther King, some national disease or sickness in which we all share guilt and are made to feel as if we are participants in the crime.

I am as horrified as anyone could be that such an act of violence can happen here. I am aware, too, that attacks on our political leaders seem to be happening with increasing frequency.

I do not believe it in any way minimizes the tragedy of this event to point out that it is not a new phenomenon, and, given the increased population, mobility, and physical access to political leaders, even the increasing frequency of such incidents is not necessarily a symptom of sickness in our society.

I have listened to newsmen link this event to our "senseless and unjustifiable killings of people in another country who

On August 9, 1966, Senator Ervin introduced S. 3703,[13] a bill "to protect the employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted invasions of their privacy." [13] On August 26, 1966, Senator Ervin introduced S. 3779,[14] a bill similar in intent to S. 3703 but differing in the provision of penalties.[15] Both S. 3703 and S. 3779 were sent to the Senate Judiciary Committee and then referred to the Subcommittee on Constitutional Rights. As a result of the Subcommittee hearings, amendments to S. 3779 were proposed to meet "legitimate objections to the scope and language raised by administrative witnesses and to clarify the intent of its cosponsors." [16] The most notable amendment to S. 3779 resulted from Professor Alan F. Westlin's proposal for a Board on Employees' Rights.[17] Professor Westin commented:

"A new agency ought to be set up within the executive branch, along the lines of what is generally called the ombudsman principle, which would be empowered to receive employee complaints, to hold hearings, and determine whether the Federal right to privacy for employees against unreasonable intrusions has been invaded without justification, or without proper cause. . . . It is a mistake to see this function as one which the Civil Service Commission either can or should perform. I think it calls for an independent agency".[18]

On February 21, 1967, Senator Ervin introduced S. 1035,[19] an amended version of S. 3779. The bill was referred to the Senate Judiciary Committee and, on September 13, 1967, it passed the Senate by a vote of 79–4.[20] On June 13, 1968, exactly nine months after passage by the Senate, hearings on S. 1035 (and H.R. 17760) [21] were begun in the House Subcommittee on Manpower and Civil Service [22] where S. 1035 died.[23] On January 21, 1969 a bill encompassing the same provisions as S. 7035 was introduced in the Senate as S. 782.[24] In introducing this bill, Senator Ervin noted that:

"On reflection, however, it may be that concerted opposition to the bill [S. 1035] mounted by the federal agencies and departments is only one more example of the effective and smooth cooperation which government agencies can demonstrate when the occasion demands. As they viewed it, I suppose impending enactment of S. 1035 was such an occasion" . . . .[25]

S. 782 was referred to the Senate Subcommittee on Constitutional Rights, and on July 22, 1969, the Subcommittee met in executive session to receive the testimony from Richard Helms, Director of the Central Intelligence Agency (CIA).[26] On the basis of his testimony, and after a number of meetings with officials of the National Security Agency (NSA) and the Federal Bureau of Investigation (FBI), committee amendments were drafted to meet the approval of the Directors of those agencies.[27] On May 15, 1970, S. 782 was approved unanimously by the Senate Judiciary Committee,[28] and on May 19, 1970, the Senate passed the bill *viva voce*.[29] On May 20, 1970, S. 782 was sent to the House Post Office and Civil Service Committee and referred to the Subcommittee On Manpower and Civil Service,[30] where the bill is now pending. Senator Ervin predicted that "although the bill [S. 1035] died in a House Post Office and Civil Service Subcommittee in the last Congress, I believe prospects are much brighter for passage [of S. 782] this year." [31]

The need to protect federal employees from unwarranted invasions of their privacy was amply documented throughout the legislative history of S. 782. Several blatant examples of privacy-invading techniques follow.

The example most frequently cited during the hearings was the salacious interrogation of an eighteen year-old college sophomore co-ed, applying for a summer job as a secretary at a federal agency. She was asked intimate questions regarding her personal relationship with a boy whom she was dating. A few illustrative questions should suffice: "Did he abuse you?", Did he do anything unnatural with you?", "You didn't get pregnant, did you?" [32] Of course, one can see the relevance of such questions to secretarial skills.

A second and more subtle means of invading privacy is demonstrtaed by the use of psychological examinations, personality inventories, and even polygraph tests. Perhaps a legitimate argument might be advanced that such precautions are necessary for jobs involving national security. However, these mind probing techniques often require employees to answer intimate questions relating to sex, religion, family relationships, or personal beliefs having little to do with national security.

The Minnesota Multiphasic Personality Inventory (MMPI) is one of the tests frequently utilized by government agencies. The test contains 566 true/false questions which must be answered, "quickly and without thinking or deliberating." [33] Examples of these questions are:

(20) My sex life is satisfactory.

(58) Everything is turning out just like the prophets in the Bible said it would.

(95) I go to church almost every week.

(115) I believe in a life hereafter.

(177) My mother was a good woman.

(216) There is very little love and companionship in my family as compared to other homes.

(258) I believe there is a God.

(320) Many of my dreams are about sex matters.

(387) I have difficulty holding my urine.

(519) There is something wrong with my sex organs.[34]

Martin L. Gross, author of a study on psychological testing,[35] testified before the Senate Subcommittee on Constitutional Rights that there has never been a validated psychological test, nor a single statistically significant experiment indicating that a personality test predicted emotional behavior.[36] To make matters worse, the agencies have used these invalid tests improperly. The use of untrained personnel and the random selection of questions removed from their test context, have destroyed even the reliability of the tests. Yet despite this, and the invasion of privacy inherent in such tests, the agencies continue to use them with little reservation.[37]

The disclosure of family financial affairs is another serious intrusion into the right to privacy. Pursuant to Executive Order No. 11222,[38] the Civil Service Commission implemented a questionnaire requiring periodic disclosure of the personal finances of federal employees and their immediate families. The purpose of this questionnaire is to prevent conflicts of interest among the upper echelon employees of the federal government. However, section 402 [39] of the Executive Order provides that other employees may be required to file similar disclosures. Obviously this requirement is ineffectual in disclosing the unethical employee, since it would not be difficult for him to falsify the questionnaire in order to conceal a conflict of interest. Yet, for the overwhelming majority of ethical employees, the requirement is a particularly objectionable invasion of privacy. As Senator Ervin commented:

"[T]his policy amounts to a demand that the employee, on pain of losing his job, prove every few months that he and members of his family are not violating or even appearing to violate federal laws. To my mind, this questionnaire constitutes a colossal vote of no-confidence." . . .[40]

One of the most clandestine intrusions into the area of individual privacy and one of the hardest to legislate against, is the subtle coercion of employees to follow the whims and desires of supervisory personnel. These include the solicitation for charities, contributions to favorite funds, involvement in savings bond programs and attendance at unrelated meetings, activities, and the like. An individual employee could hardly be expected to refuse such "requests" by his supervisor, when the same supervisor will determine his qualifications for promotion.[41]

Of particular concern in the current period of political activism is the denial of federal employment to those persons who have engaged in demonstrations and protests. Although intended to meet legitimtae objections to the abuses of the political process, in a reactionary period, such stringent prohibitions may also serve to stifle individual initiative and involvement in an area having little to do with one's employment with the federal government. These sanctions might be invoked merely because the propriety of such involvement is questioned. As Senator Ervin has commented, "it is essential to assure that any denial of a security clearance or of a federal job is rendered on equitable, just, and timely standards of social behavior." [42]

S. 782 is a legislative attempt to remedy these and other practices which are eroding the traditional pillars of freedom today. Obviously, passage of the bill will not eliminate "all the ills besetting the federal service, all of the invasions of privacy," [43] nor all of the isolated incidents of coercion and intimidation. As Senator Ervin has commented: "We cannot legislate against all manner of fools or their follies." [44] But, as an analysis of the bill will demonstrate, S. 782 is an attempt to provide basic standards for governing the individual rights of those under federal employment.

S. 782

The Act encompasses four major provisions which include: government officials who are forbidden to pursue certain activities, the four classes of prohibited activities themselves, judicial remedies for violation of the Act, and several protective or balancing clauses.

There are three classes of government officials against whom S. 782 is directed. Section 1 provides that "[a]ny officer of an executive department or executive agency . . . or any person purporting to act under his authority . . ." [45] is prohibited from participating in certain enumerated activities. Section 3 provides that "[a]ny commissioned officer . . . or any member of the Armed Forces acting or purporting to act under his authority . . ." [46] is prohibited from engaging in the same activities as prescribed in section 1. And section 2 provides that "[a]ny officer of the United States Civil Service Commission, or any person purporting to act under his authority . . ." [47] is prohibited from performing certain of the selected activities forbidden to the above two classes of personnel.

The Act contemplates a number of activities which are considered in violation of the individual's basic right to privacy. Among these activities are the following, which are specifically denied to the first two classes of supervisory personnel:

RACE, RELIGION, AND NATIONAL ORIGIN—SECTION 1(A)

It is unlawful to require by any manner "[a]ny civilian [48] employee . . . in executive branch . . . to disclose his race, religion, or national origin, . . . or [that] of his forebearers." [49] However, inquiry into national origin is not prohibited where this factor may adversely affect national security.[50] Such inquiry is only permitted in cases where it is a statutory prerequisite for employment or job assignment.

NON-JOB RELATED ACTIVITIES—SECTION 1 (B), (C), (D), (G), & (H)

Executive department officer are prohibited from informing or intimating to em-

Footnotes at end of article.

ployees that notice will be taken of their attendance or nonattendance at any non-job related meeting or any other outside activities. Furthermore, an employee may not be required to make a report on activities which are unrelated to his job, unless there is "reason to believe . . . [that the activities are] in conflict with his official duties."[51] "Exception to this injunction is made for meetings which provide for the development of skills qualifying an employee for the performance of his job." [52]

In addition, it is unlawful to coerce an employee to invest in government bonds or securities or to make donations to charitable causes. However, it is appropriate that supervisory personnel call meetings or take other actions which afford the employee the *opportunity* to participate in the aforementioned activities.[53]

Finally, by a provision similar to the Hatch Act,[54] executive officers are forbidden in any way to require their employees to participate or not participate in political activities.[55]

INVESTIGATION INTO PERSONAL AND FAMILY MATTER—SECTION 1(c),(f),(l) AND (j)

It is unlawful to elicit from an employee or applicant information concerning: personal relations with his spouse or blood relatives, religious beliefs or practices, and attitudes or conduct concerning sexual matters [56] via any of the following techniques; interrogation, examination, psychological testing,[57] or polygraph testing.[58] This prohibtion is made with the following provisos: (1) that the clause will not be "construed to prevent a physician . . . from authorizing such tests in the diagnosis or treatment of any civilian employee or applicant . . . where such information [is] necessary . . . to determine [if that] . . . individual is suffering from mental illness;" [59] (2) that such treatment is "not pursuant to general practices or regulations governing" [60] a class of individuals; and (3) that nothing contained in the clauses will be "construed to prohibit . . . advising . . . [the] employee of specific charges of sexual misconduct made against [him]. . . ." [61]

Furthermore, it is unlawful to require an employee or prospective employee to disclose family financial matters. However, the employee will not be freed, as a result of these prohibitions, from making the usual disclosures to the appropriate governmental department or agency of such records as tariffs, taxes, customs duties, and other lawful obligations.[62] In addition, disclosures may be required of an employee who, in his job capacity, has the power of final determination of tax or other liability of any person or legal entity, or who may have a conflict of interest between his personal financial dealings and the performance of his official duties.[63]

OTHER PROTECTIONS—SECTION 1(k) & (l)

The third class of supervisory personnel, officers of the Civil Service Commission, is enjoined from requiring any executive department official to violate the provisions of section 1. Requiring civilian employees or applicants to disclose, by any of the above mentioned methods, any of the information enumerated in sections 1(e) and (f), is unlawful.

The Act further provides that an employee should not have to present his case without aid.[64] To implement this protection, any person under interrogation for misconduct which could lead to disciplinary action is permitted the presence of counsel or another representative of his choice at such inquisition.[65] However, the foregoing right is severely curtailed in the case of the NSA and CIA. Counsel or representative must either be an employee of the agency or must be given security clearance for access to available information. To protect an employee who files a complaint, the Act makes it unlawful to discriminate in any way against an employee who refuses to submit to the demands or other actions of his superior which are made illegal by this bill, or for exercising any right granted by it.[66]

One of the primary rights granted by the Act is the ability to seek judicial as well as administrative remedies. Standing to sue or file a grievance action with the Board on Employees' Rights,[67] (hereinafter designated "the Board"), is provided by the Act for: any person with a personal complaint, any person representing a class of aggrieved employees, or any employee organized on behalf of its membership,[68] for any activity made illegal by this bill.

Sections 4 and 5 afford two forums in which remedial action may be taken, both of which are given primary jurisdiction to hear the complaint. The first is the Board which is nonpartisan, separate from the Civil Service Commission, and nongovernmental in its composition. It is endowed with the power to issue: administrative sanctions; cease and desist orders; arbitration proceedings; recommendations for general courts-martial, where appropriate; and in the case of a federal appointee, a report to the Congress and the President.[69] For purposes of judicial review, decisions emanating from the Board are to be considered final. No matter which route is chosen, judicial review is begun at the U.S. District Court level.[70]

The second path is to file a suit seeking civil damages, before the appropriate United States District Court.[71] The Act obviates the necessity of first exhausting other administrative remedies before filing a complaint with the Board or the courts.

The forum chosen for the initial action must be elected prior to commencement of the proceedings, since the respective paths are mutually exclusive.[72] The civil court route seems the most attractive, since it affords damages as one type of remedy. However, there are three critical factors which may discourage complainants to proceed via the Board: delay because of overloaded court calendars,[73] the expense of courtroom litigation, and the fact that section 5(m) allows civil action review of Board decisions in the United States District Court, the court of original jurisdiction for civil actions.

There are two clauses balancing individual against societal rights. The first gives substantive protection to the employees' right to litigate an alleged invasion of privacy.[74] The second balances the right of societal self-preservation against the individual's right to privacy by insuring that investigative agencies will retain the ability to ferret out elements which may be subverting society.[75] Section 5(h) protects the complainant and any necessary witnesses against economic coercion. It provides that all employees who appear before the Board will be compensated for the work time lost and will be remunerated for any additional expenses resulting from such appearance. In addition, all employees appearing will be "free from restraint, coercion, interference, or reprisal in or because of their participation." [76]

Section 6, at the request of Senator Bayh [77] and Senator Young,[78] preserves the investigative prerogatives of the three major security agencies. By negative implication, any director or employee designated by the director of the CIA or NSA, is permitted to pursue activities forbidden other executive officers by sections 1(e) and (f) as long as there is a "personal finding with regard to each of the individuals to be so tested or examined that such test or information is required to protect the national security." [79]

ANALYSIS OF S. 782

This section will attempt to analyze S. 782 by dealing with the following three issues: (1) how well the Act fulfills its purpose as propounded by Senator Ervin in the report issued by the Senate Committee on the Judiciary,[80] (2) what are the major loopholes and legislative omissions, and (3) how does the Act relate to the whole issue of privacy in our society today?

As measured against the avowed purpose, the Act fares only moderately well. The purpose of the Act in general, is to extend to all civilian employees of the United States Government the basic constitutional right to individual privacy which has been infringed upon by government officers with alarming frequency. Specifically, the legislation is designed to meet three exigencies: (1) to establish a statutory basis for protecting certain rights and liberties of government employees, meeting not only present but also future needs; (2) the need to attract the best qualified employees for federal service; and (3) to set an example for state and local government and private industry.[81]

In providing immediate statutory relief, this Act makes a major contribution in fulfilling the present needs of federal employees and applicants. Previously, there was no way by which an employee could gain standing to sue except at the discretion of a government grievance committee. The established grievance procedures carry any complaint regarding invasion of the right of privacy down a bureaucratic cul-de-sac. The employee would file his complaint, which in turn would be passed through the channels to the grievance committee. The grievance committee in turn would return such complaint to the employee's superior for refutation of the allegations, wherein the complaint would die. The provisions of this Act allow the employee the opportunity to directly test through adversary proceedings, either in open court or in a quasi-judicial hearing, the constitutionality of some rather questionable government practices.[82] Endorsement of the bill is widespread among employee organizations, attesting to the fact that the Act apparently meets present needs for statutory protection.

One consideration relevant to the ability of the bill to meet future needs is the growing size of governmental involvement in the business of the country. In many instances the government requires the same kind of security precautions for industry's employees as it does for its own, and national security frequently requires legitimate curtailment of an individual's constitutional rights. As governmental operations affect more and more lives in this manner, extension of legislative protection seems inevitable. Increasingly closer scrutiny will have to be paid to the balancing of individual rights against the necessities of society. Two prominent jurists sounded the warning eighty years ago: "[f]rom time to time society must redefine the exact nature of the right of privacy according to political, social, and economic changes . . . [recognizing] new rights if established freedom is to be maintained." [83] It is hoped that this bill will be but a step in a continually evolving process.

The second function of the bill, the attraction and retention of career federal employees, is difficult to assess by objective criteria. Although it is possible that some highly qualified applicants refuse federal employment because of the various screening procedures employed by many agencies and departments, it seems more likely that the vast number of people seeking employment with the executive branch of the government are unconcerned by the invasions of privacy at the initial interviews for their new jobs. The reason is simple; such practices are frequently utilized by private industry. However, raising the issue of initial refusal of federal service begs the question. There are far more compelling reasons for rejecting federal employment, such as low initial salary and lack of adequate career advancement opportunities, which must be considered before the issue of invasion of privacy can be reached. To the Government, retention of

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the employee is equally as important as attracting him, and herein the bill answers a critical need. The blatant and persistent application of bureaucratic pressure and invasion of privacy may, on the basis of this bill, be questioned with impunity. Undoubtedly, subtle pressures resulting from personality conflicts will continue to be applied to employees, but that is a problem which is beyond legislation.

Although private industry is not always quick to follow governmental leads, once civil cases by federal employees have been successfully prosecuted, an avenue will be opened for judicial interpretation which may have a profound effect on private industry. At the state and local levels, there have already been some moves to incorporate many of the Act's protections as evidenced by testimony of New York Civil Service Commission Secretary Allan J. Graham at the hearings on S. 1035.[84]

Summarizing the above standards for appraising the bill, S. 782 provides an immediate, impartial forum and judicial remedies for a federal employee's complaints against glaring incursions by the executive branch of the government into cherished, constitutionally protected areas. It is impossible for this legislation to alleviate all future problems in this area. It is equally unlikely that the example which it sets will be sufficient to encourage state and local governments and private industry to incorporate the Act's protections without some further stimulus. However, there can be no doubt that as a remedy for present and future conditions, S. 782 provides a viable first step. As stated by Vincent Connery, president of the National Association of Internal Revenue Employees, "during . . . a period of rapidly accelerating demand among federal employees for truly first-class citizenship . . . [this] bill holds out the serious hope of attaining such citizenship." [85]

Turning to the question of future effectiveness of the bill, it is necessary to discuss loopholes and legislative omissions which seriously impair that effectiveness. A major concern is section 1(e) which purports to protect employees from being denied the opportunity to refute charges of sexual misconduct made by an executive officer. The clause requires that the officer is not prohibited from advising the employee of such a charge.[86] This provision leaves to the officer's discretion something which in light of the variance in our cultural mores, should be mandatory; an employee should have the affirmative right to answer any such charge. The employee, to fully protect his right to answer ungrounded charges, should be granted the right to examine his official dossier, including memoranda, on demand at any time provided that a record be maintained of the inspection.[87] This examination right should also extend to the photocopying of any pertinent documents. To enforce such a right of inspection, it would be necessary to establish a central record office wtih employees having immediate access.

An important omission from the Act is the right of the employee to know the specific grounds for denial of promotion, assignment, or initial employment, and, if the information is insufficient on its face, the right to initiate full discovery proceedings before the Board. A protective clause of this nature would apprise an employee of the possible existence of adverse information in his dossier. To facilitate the above provision, clear guidelines should be established by all departments and agencies for making these major administrative decisions. Furthermore, the necessity of maintaining a dosier which contains such personal information as one's sexual actvities should be re-evaluated. As Senior Bible stated at the hearings on S. 1035, "There is a line between what is federal business and what is personal business and Congress must draw that line. The rght of privacy must be spelled out." [88]

Another major omission is the way in which certain kinds of information can be elicited. S. 782 narrowly circumscribes four techniques which are forbidden. However, the clever bureaucrat will quickly devise new and awesome procedures for achieving the same ends. Science is constantly researching information gathering techniques. These techniques are often pragmatically applied by scientists who have become subservient to the demands of government "technocrats" on whom these scientists rely for reseach money and prestige. As stated by Harold D. Lasswell of Yale Law School, "If the earlier promise was that knowledge would make men free, the contemporary reality seems to be that more men are manipulated without their consent for more purposes by more techniques . . . than at any time in history." [89] Harrell R. Rodgers, Jr. cites some of the terrifying new technological developments for invading the sanctity of the home and of man's personality, such as: narcoanalysis (chemical truth drugs); electronic eavesdropping devices such as the laser transmitter which can penetrate a room several blocks away and give a full television reproduction of the scene, including sound; and, brain wave analysis, which in the near future scientists predict will be able to "read" thoughts.[90] S. 782 affords no protection against such invasions.

In effect, Sections 6 and 7 of S. 782 provide a release of two major investigative arms of the government: the CIA and NSA. It is necessary to note the process through which this is achieved. First, the CIA and NSA are exempted from the prohibitions of Sections 1 (e) & (f). Second, before availing himself of the procedures in Sections 4 and 5, a complainant must first submit his grievance to one of the above agencies and then allow them one hundred and twenty days to either correct a wrong or alleviate a threatened one. These two clauses seem innocuous until one reads them together with the third clause; this clause allows the Director of the agency, at his discretion, to terminate the employment of an individual when it is necessary and advisable "in the interests of the United States." [91] The net effect of these clauses might be to allow the employee the right to complain, but to give the agency the option of one hundred and twenty days of dilatory proceedings, at the end of which, if the issue has not been dropped, the employee may be subject to dismissal.

Section 9 of S. 782 completely exempts the third major investigative agency, the FBI, from coverage by the bill. This loophole looms ominous. Why is this agency permitted to escape coverage? If we are going to be concerned about the rights of federal employees, and indeed ultimately of all Americans, one might generate some questions about the unlimited information gathering ability of these three autonomous investigative agencies: the FBI, NSA, and CIA. As these agencies exist today, they have virtually unlimited power to snoop and pry into people's personal lives under the guise of national security. How safe from invasion is an employee's right of privacy, if a bureaucrat may in the future request of one of these agencies an investigation which is otherwise forbidden to him under the Act? It seems far-fetched now, but it is not beyond the realm of possibility.

Restrictions on the unlimited storage of information by electronic data banks [92] is the last major omission to be discussed. Because this issue concerns not only federal employees but also every citizen of the United States, it is of major importance. The government, with increased efficiency of integrated information-retrieval systems, is rapidly moving towards a central data bank which will store information on every aspect of an employee's life. Two issues are apparent. What limits will be placed upon access to the information, and perhaps more importantly, what information is to be stored in the first place? The potential for invasions of privacy poses virtually unlimited dangers to the stability and security of man in society as a social, psychological, and political being.

AN OVERVIEW OF THE ISSUE OF PRIVACY

There is no question of greater importance to a free society than that of defining the right of privacy. This right is the most important pillar of freedom. The framers of the Constitution, with a keen awareness of the ease with which tyrannous power can be used to erode freedom had this right clearly in mind as they wrote that citizens should be "secure in their *persons*, houses, papers, and effects, against unreasonable searches and seizures . . . ." [93] (emphasis added). In fact, the heart of the Bill of Rights is predicated upon this right. In this light one must view the governmental incursions into this constitutionally protected area. To allow encroachments upon the right to privacy of federal employees within the framework of free society may lead to an irrevocable disintegration of the right to privacy for all.

It is necessary for Congress to commence a comprehensive and definitive treatment of the right of privacy at this stage in our historical development. At no time in the past were individuals and government more able to invade that right with such subtlety as they are now. Our technological advancement has achieved such a degree of sophistication that the right can be curtailed without one's being aware of the method used. We no longer can afford the luxury of a patchwork approach by our legislature and judiciary. Perhaps the first attempt at defining the right occurred in *Olmstead v. United States*,[94] where Justice Brandeis described privacy as "the most comprehensive right and the right most valued by civilized man . . . The makers of our Constitution . . . conferred, as against government, the right to be left alone." [95] However, since there is no specific constitutional amendment protecting a right of privacy, the Supreme Court has had to use theories related to specific amendment guarantees, such as first, fourth, fifth, and ninth, in order to give color to a theory of protection of privacy.

Utilizing the "due process" [96] protection of the Constitution, the Court was able to reach the privacy issue in cases such as *Breithaupt v. Abram*,[97] where invasion of a person's body without consent was at issue, and *Griswold v. Connecticut*,[98] where invasion of the sanctity of marital relations was in contest. "Search and seizure" also presented a fruitful area to develop the definition of privacy. The landmark decision in this area was *Mapp v. Ohio*,[99] where the Court utilized the fourth amendment to establish the principle that the right of privacy is protected in the constitutional guarantee of freedom from "unreasonable searches." [100] The most recent area of litigation around the privacy issue is that of wire-tapping and other electronic eavesdropping devices.[101] In these cases, the fourth and fifth amendment protections were coupled together. The *Griswold* case, however, is the cleverest expansion of the right of privacy by judicial interpretation. The Court there utilized the ninth amendment's protection of "unenumerated rights." [102]

The Court has been able to define some areas where privacy is protected, but this is not enough. There is no definitive guideline for such an interpretive process. The time is ripe for Congress to begin a comprehensive definition of this right, since this process obviously cannot be achieved entirely through the courts. The guideline must come from Congress, which is the only government body charged with expressing the

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common will of society. S. 782 appears to be a good stepping stone.

ROBERT M. FOLEY,
HAROLD P. COXSON, Jr.

FOOTNOTES

[1] J. MILL, ON LIBERTY 117–118 (Appleton, Century, Crofts ed. 1947).

[2] S. 782, 91st Cong., 1st Sess. (1969).

[3] Mill noted: "There is a limit to the legitimate interference of collective opinion with individual independence; and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism." J. S. Mill, *supra* note 1, at 5.

[4] Mill's utilitarian philosophy is premised on the theory that all human action should attempt to create the greatest happiness for the greatest number of people. Thus, although an individual's freedom should not be unduly restricted, the primacy of the individual should not transcend the aggregate needs of society.

[5] Rogers, *New Era of Privacy*, 43 N. DAK. L. REV. 253 (Winter, 1967).

[6] S. 782 is phrased in constitutional terms—"to protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent the unwarranted governmental invasions of their privacy," S. 782, 91st Cong., 1st Sess. (1969). Senator Ervin commented that the purpose of the bill was "to assure as far as possible that those in the executive branch responsible for administering the laws adhere to constitutional standards in their programs, policies, and administrative techniques." S. REP. No. 534, 90th Cong., 1st Sess. 5 (1967).

[7] S. 782 is premised on the fact that federal employee lack viable remedies for their grievances. The Senate Judiciary Committee's report on S. 1035, an earlier version of the bill, stated: "Testimony at the hearings as well as investigation of complaints have demonstrated that in the area of employee rights, a right is only as secure as its enforcement. There is overwhelming evidence that employees have heretofore frequently lacked apropriate remedies either in the courts or the Civil Service Commission for pursuing rights which belong to them as citizens." S. REP. No. 534, 90th Cong., 1st Sess. 31 (1967).

[8] *Id.* at 7.

[9] As Senator Ervin observed: "Never in the history of the Subcommittee on Constitutional Rights have we been so overwhelmed with personal complaints, phone calls, letters, and office visits. In all of our investigations I have never seen anything to equal the outrage and indignation from government employees, their families and their friends." *Hearings on S. 3779 Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 89th Cong., 2d Sess. 3 (1966) [hereinafter cited as *Hearings on S. 3779*].

[10] *Hearings on Psychological Tests and Constitutional Rights Before the Subcomm. on the Judiciary*, 89th Cong., 1st Sess. (1965).

[11] Letter from Senator Ervin to President Johnson, Aug. 3, 1965, printed in *Hearings on S. 3779*, *supra* note 9, at 367.

[12] S. 3703, 89th Cong., 2d Sess. (1966).

[13] *Id.*

[14] S. 3779, 89th Cong., 2d Sess. (1966).

[15] S. 3703 provides the penalty of "a fine not exceeding $1,000, or . . . imprisonment not exceeding one year, or . . . both . . ." for the violation or attempted violation of employee rights enumerated in the bill. S. 3703, 89th Cong., 2d See. § 2 (1966). S. 3779 reduced the penalties to a maximum of $500 and 6 months imprisonment. S. 3779, 89th Cong., 2d Sess. § 2 (1966).

This reduction is noteworthy. Throughout the history of this legislation it will be noted that the criminal penalties are reduced. In the original version of S. 1035, the penalties were reduced further to a maximum of $300 and 30 days. In the final version of S. 1035, and later in S. 782, criminal penalties are eliminated entirely and redress is limited to civil remedies. S. 1035, 90th Cong., 1st Sess. (1967) and S. 782, 91st Cong., 1st Sess. (1969). This is indicative of the remedial design intended for the violation of employee rights. Criminal sanctions would create an unreasonable hardship for the offending official.

[16] S. Rep. No. 534, 90th Cong., 1st Sess. 10 (1967).

[17] S. 1035, sec. 5(a), 90th Cong., 1st Sess. (1967).

[18] *Hearings on S. 3779*, *supra* note 9, at 247.

[19] S. 1035, 90th Cong., 1st Sess. (1967). S. 1035 incorporated the Board of Employees' Rights proposed in the *Hearings on S. 3779*. In addition to S. 1035, Senator Ervin introduced S. 1036 to "protect members of the Armed Forces of the United States by prohibiting coercion in the solicitation of charitable contributions and the purchase of government securities." S. 1036, 90th Cong., 1st Sess. (1967).

[20] 113 CONG. REC. 25456 (1967). After absentee approvals were recorded the total vote was 90–4. The four opposing votes were cast by Senators Eastland, Hollings, Russell and Stennis. Originally, Senate debate on S. 1035 was scheduled for August 29, 1967. However, the debate was postponed because of objections raised by the CIA and NSA who felt that they should be completely exempted from the requirements of the bill. 113 CONG. REC. 25410 (1967) (remarks of Senator Ervin).

In the debate prior to the vote on S. 1035, Senator Ervin reluctantly submitted a committee amendment granting partial exemption to the CIA and NSA. 113 CONG. REC. 25410 (1967). In addition, the original version of S. 1035 contained a complete exemption for the FBI. However, Senator Ervin modified the bill to include Senator Young's amendment, granting only partial exemption to the FBI. 113 CONG. REC. 25452 (1967). Thus, S. 1035 as passed by the Senate, included partial exemptions for all three security agencies—the FBI, CIA, and NSA.

[21] H.R. 17760 ("a bill to recognize the rights and obligations of the civilian employees of the executive branch of the Government of the United States") had been introduced by House Subcommittee Chairman David N. Henderson (D.-N.C.) only two days prior to the scheduled hearings. Essentially, H.R. 17760 listed the rights and *obligations* of federal employees. H.R. 17760, 90th Cong., 2d Sess. (1968). Congressman Henderson, as well as Civil Service Commission Chairman John Macy, felt that Senator Ervin's bill did not reflect the obligations that federal employees necessarily assumed by government employment. *Hearings Before the Subcomm. on Manpower and Civil Service of the Comm. on Post Office and Civil Service*, 90th Cong., 2d Sess. 28 (1967) (testimony of Mr. Macy).

Senator Ervin commented: "This bill H.R. 17760 not only would retain the status quo and reinforce the present evils perpetrated under existing law; its language can be used to justify further restrictions on the freedom of employees. . . . H.R. 17760 protects no rights; it provides no remedies. It provides no Board on Employees' Rights. It affords no access to the courts. Without specific remedies, and without specific rights, that bill is, . . . 'a feeble litany of pious hopes.'" *Hearings on* S. 1035 and H.R. 17760, *supra* at 134.

[22] *Hearings on* S. 1035 and H.R. 17760 *Before Subcomm. on Manpower and Civil Service of the House Comm. on Post Office and Civil Service*, 90th Cong., 2d Session. (1968) [hereinafter referred to as *Hearings on* S. 1035 and H.R. 17760].

[23] Civil Service Commission Chairman John W. Macy, Jr. had previously expressed opposition to the bill. *See Hearings on* S. 1035 and H.R. 17760, *supra* note 22, at 57–63, Mr. Macy's testimony at the *Hearings on* S. 1035 and H.R. 17760 was also critical. *Id.* at 27–55 *generally*. Later, in the same hearings, Senator Ervin characterized Macy as the " 'Great White Knight' of the executive branch of the Government in fighting this bill", and noted that "he [Macy] . . . hides to some extent behind the security agencies in waging this battle." *Id.* at 205. The major opposition to the bill appeared to come from the Civil Service Commission (via the Macy-Ervin vendetta) and the security agencies.

[24] S. 782, 91st Cong., 1st Sess. (1969).

[25] 115 CONG. REC. (*daily* ed. Jan. 31, 1969).

[26] S. REP. No. 91–873, 91st Cong., 2d Sess. 3 (1970).

[27] *Id.*

[28] *Id.*

[29] 116 CONG. REC. 7352–7368, D500 (daily ed. May 19, 1970).

[30] It will be noted that this is the House Subcommittee, chaired by David N. Henderson (D.-N.C.), in which S. 1035 died during the 90th Congress. Congressman Henderson's own bill (H.R. 17760), introduced just prior to the hearings on S. 1035, contributed to that set back. *See* note 21, *supra*. However, as yet, Congressman Henderson has not revealed plans to oppose S. 782 or to introduce a companion bill himself.

[31] Remarks by Senator Sam J. Ervin, *S. Subcomm. on Constitutional Rights Release* (May 15, 1970). Senator Ervin's optimism appears well founded. First, as Senator Ervin has observed: "[b]oth major party platforms and position papers by both Presidential candidates in 1968 pointed to a bipartisan commitment to further legislative protection for employee privacy of the nature of S. 782." The cosponsors of the bill attest to its bipartisan support. A representative sample of the cosponsors should suffice to demonstrate the divergent political philosophies represented. Among the cosponsors are Senators McCarthy, McGovern, Muskie, Byrd, Scott, Brooke, Mathias, Tower, Goldwater, and Thurmond. In addition, it would appear that the major objections of the security agencies have been removed by the addition of committee amendments. Finally, Civil Service Commission Chairman Macy has retired and the new Chairman, Robert Hampton, has not expressed opposition to the bill.

[32] S. REP. No. 534 *supra* note 7, at 19. A 25 year old NSA applicant was given a polygraph test in which he was asked: "When was the first time you had sexual relations with a woman?"; "Have you ever engaged in homosexual activities?"; "Have you ever engaged in sexual activities with an animal?"; "When was the first time you had sexual relations with your wife?"; "Did you have intercourse with her before you were married?"; "How many times?" *Id.* at 21–22.

[33] *Hearings on Psychological Tests and Constitutional Rights Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess. 507 (1965) (sample questions from personality tests administered to one State Department employee during a fitness-for-duty examination).

[34] *Id.* at 507. (some questions also taken from S. REP. No. 534, *supra* note 7, at 5–6).

[35] M. GROSS, THE BRAIN WATCHERS (Random House, 1962).

[36] *Hearings on Psychological Tests and Constitutional Rights Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess. 33 (1965) (statement of Martin L. Gross) [hereinafter cited as *Hearings on Psychological Tests and Constitutional Rights*].

[37] "The Subcommittee Hearings in 1965 on 'Psychological Tests and Constitutional Rights' and its subsequent investigations support the need for such statutory prohibitions on the use of tests." S. REP. No. 534, *supra* note 7, at 20. *See generally*, Hearings on Psychological Tests and Constitutional Rights, *supra* note 30.

[38] Exec. Order No. 11,222, 3 C.F.R. § 560, 18 U.S.C. § 201 (Supp. II, 1965–66).

[39] Exec. Order No. 11,222, 3 C.F.R. §560, 18 U.S.C. § 402 (Supp. II, 1965–66). "The Civil Service Commission shall prescribe regulations, not inconsistent with this part, to require the submission of statements of financial interests by such employees, subordinate to the heads of agencies, as the Commission may designate. The Commission shall prescribe the form and content of such statements and the time or times and places for such submission." Thus, subject to the discretion of the Commission, any government employee may be required to report.

[40] Letter from Senator Ervin to John W. Macy, June 23, 1966, printed in *Hearings on* S. 3779, *supra* note 9, at 521.

[41] When asked about the effect of refusing to participate in these programs, one official replied that it would constitute an "undesirable work attitude bordering on insubordination and should at the very least be reflected on the annual efficiency rating of the employee." 113 Con. Rec. 25413 (1967).

[42] Letter from Senator Ervin to Robert Hampton, April 17, 1970, printed in S. Subcomm. on Constitutional Rights Release (April 17, 1970).

[43] *Id.* at 25410.

[44] *Id.*

[45] S. 782, 91st Cong., 1st Sess., at 1–2 (1969).

[46] *Id.* at 10.

[47] *Id.* at 8.

[48] Note the word civilian as differentiated from an employee of the Armed Forces is used so as not to infringe on military jurisdiction.

[49] S. 782, 91st Cong., 1st Sess., at 2 (1969).

[50] This provision protects the various investigative agencies of the executive branch. It serves as a balance wheel, giving interpretive latitude to decision makers who have to balance individual interests against society as a whole. The problem is that there is no yardstick by which to measure the limits of this phrase. One is left with an Alice-in-Wonderland situation. It is conceded that to formulate the necessary definitional guidelines for the phrase would require going to the very roots of foreign and domestic policy making. Such a task would require the executive branch to devise a framework of congruent national goals. It may be added that close scrutiny must be paid to limitations on individual liberty, for "without liberty, national security is a hollow phrase." 112 Cong. Rec. 25411 (1967) (remarks by Senator Ervin).

[51] *Id.* § 1(d), at 4. Such a requirement protects the employee by placing the burden of proof squarely on the shoulders of the executive officer to show the alleged connection at the hearing or trial of the employee's complaint.

[52] S. 782, 91st Cong., 1st Sess. § 1(b), (c) at 2–3 *in general* (1969).

[53] *Id.* § (h), at 6.

[54] Federal Corrupt Practices Act 18 U.S.C. §§ 601, 2 (1964), and 5 U.S.C. § 7324 (1964).

[55] S. 782, 91st Cong., 1st Sess. § 1(q) at 5–6 (1969).

[56] *Id.* § 1(e), at 4.

[57] *Id.*

[58] *Id.* § 1(f), at 5.

[59] *Id.* § 1(e), at 4.

[60] *Id.* at 4–5.

[61] Id. at 5.

[62] *Id.* § 1(i), at 7.

[63] *Id.* § 1(j), at 7.

[64] *Id.* § 1(k), at 8.

[65] *Id.*

[66] *Id.* § 1(l), at 8.

[67] *Id.* § 5, at 12–13.

[68] *Id.* 4, at 11–12.

[69] *Id.* § 5, at 12–13.

[70] *Id.* § 5, at 13–15, *in general.*

[71] *Id.* § 4, at 11–12.

[72] *Id.* § 7, at 9. The fact that these forums are available does not preclude the establishment of grievance procedures within departments or agencies as established in S. 782, § 10.

[73] In S. 782 at § 5(q) and (k), the Board is encouraged to dispense with the grievance quickly; the hearing must be docketed within ten days and the opinion must be out within thirty days of the conclusion of the hearings.

[74] S. 782, 91st Cong., 1st Sess. § 4 at 11, 12(1969).

[75] *Id.* § 6 at 18, 19.

[76] *Id.* § 5(h), at 15,

[77] 113 Cong. Rec. 12943–8 (daily ed. Sept. 13, 1967).

[78] *Id.* at 12951, 12954.

[79] S. 782, 91st Cong., 1st Sess. § 6, at 19. The two provisions help to preserve the balance between individual freedom and societal need for protection.

[80] S. Rep. No. 534, 90th Cong., 1st Sess., at 3, 4(1967).

[81] *Id.* at 3, 4(1967) *in general.*

[82] *Id.* at 5, Senator Ervin, upon introduction of S. 1035 on Feb. 2, 1967, stated that, "Many current practices affecting government employees are unconstitutional; they violate not only the letter but the very spirit of the Constitution." See the Legislative History section *supra* for examples of such practices.

[83] Warren & Brandeis, *Right of Privacy,* 4 Harv. L. Rev. 193 (1890).

[84] S. Rep. No. 534, 90th Cong., 1st Sess.: "I have taken steps to propose the inclusion of several of the concepts of your bill into rules and regulations of the City Civil Service Commission."

[85] *Id.* at 6.

[86] S. 782, 91st Cong., 1st Sess. § 1(e), at 5 (1969).

[87] Congress may presently be considering legislation on this protective measure as such a proposal was made in H.R. 7214, 91st Cong., 1st Sess. (1969).

[88] S. Rep. No. 534, 90th Cong., 1st Sess. at 4(1967).

[89] Lasswell, *Must Science Serve Polttical Power?* 25 Amer. Psychologist 117, 119 (Feb., 1970).

[90] Rodgers, *New Era of Privacy,* 43 N. Dak. L.R. 253,262-3 (1967) *in general.*

[91] 50 USC § 403(c). This staute defines the reasons for terminating employment of a CIA employee. Similarly, 50 USC § 833 accomplishes the same function for the NSA.

[92] For a comprehensive treatment of this subject, see Pipe, *Privacy: Establishing Restrictions on Government Inquiry,* 18 Amer. U.L. Rev. 516 (June, 1969).

[93] U.S. Const., amend. IV.

[94] 277 U.S. 438 (1928).

[95] *Id.* at 478 (Brandeis, J. dissenting).

[96] U.S. Const., amend. V.

[97] 352 U.S. 432 (1957).

[98] 381 U.S. 479 (1965).

[99] 367 U.S. 643 (1961).

[100] U.S. Const., amend. IV.

[101] *See* Olmstead v. U.S., *supra* note 81. *See* also Nardone v. U.S., 308 U.S. 338 (1939); Lee v. U.S., 343 U.S. 747 (1952); Topez v. U.S., 373 U.S. 427 (1963); Osborne v. U.S., 385 U.S. 323 (1966); Berger v. N.Y., 388 U.S. 41 (1967); and Katz v. U.S., 389 U.S. 347 (1967).

THE FEDERAL MINIMUM WAGE AND UNEMPLOYMENT

Mr. TOWER. Mr. President, the House of Representatives has recently passed legislation increasing the Federal minimum wage. Soon the Senate will be debating this issue.

It is my hope that this debate will touch upon all of the aspects and ramifications of the minimum wage. This analysis should include a historical study of the impact of this Federal legislation as well as the potential impact which another increase will have on the economy.

I invite the attention of the Senate to an editorial published in the Wall Street Journal of May 15. The editorial points out some of the economic facts that should be considered in any discussion over the Fair Labor Standards Act.

Mr. President, many Members of Congress have criticized the administration's record on the economy, particularly in the rate of unemployment. While minimum wage legislation has been pictured as a socially humanitarian act, not enough consideration has been given to the act's negative economic repercussions—particularly in the area of teenage unemployment. I trust that all Senators, including those who have opposed the administration's economic policies, will consider this before and during the upcoming debate.

I ask unanimous consent that the editorial be printed in the Record.

There being no objection, the editorial was ordered to be printed in the Record, as follows:

Dignity and Unemployment

Despite what critics of our political system sometimes suggest, few politicians would vote for legislation they knew to be harmful to Negroes, women, teenagers and the very old. Yet minimum wage legislation, which Congress is once again debating, is harmful to each of those groups.

The idea behind minimum wages sounds like humanitarian simplicity itself: Putting a floor under every worker's wages gives him dignity and assures a bare minimum income to those lowest on the wage scale. The current measure, passed last week by the House of Representatives, is to increase that minimum for most nonagricultural workers from $1.60 to $1.80 an hour this year and $2 next year.

But that reasonable-sounding examination is based on sentiment rather than economic wisdom, so that the results are something else again. What happens is that workers of relatively low productivity whose skills aren't worth the legal minimum—the unskilled, the uneducated and the young—simply find themselves out of work.

The group most directly affected is teenagers from minority groups. A study three years ago by Professors John M. Peterson (University of Arkansas) and Charles T. Stewart Jr. (George Washington University), who systematically analyzed government and academic research on the U.S. experience with minimum wage laws, revealed that as federal minimums doubled between 1954 and 1968, unemployment among teenage Negroes increased from 15% to more than 25%, even while unemployment generally was dropping from 5.5% to 3.8%.

Another study noted that unemployment among black teenagers rose each time the minimum was increased since 1950, and now stands at higher than 30%. No wonder Milton Friedman, has branded the minimum wage law "the most anti-Negro law on our statute books—in its effect, not its intent."

It is ironic, tragically so, that the mistaken policy of minimum wages is still regarded as progressive, humane social legislation. We wish someone could explain what is either progressive or humane about marginal workers unemployed at $2 an hour, rather than employed at something less.

NATIONAL AND DULLES AIRPORTS

Mr. SPONG. Mr. President, National and Dulles Airports are the only two federally owned and operated airports in the country and, as such, they are the only two airports over which residents of the surrounding communities have absolutely no voice. Public resentment over the

growing noise and congestion at National Airport, nevertheless, finds expression through a number of other avenues, including the editorial columns of area newspapers.

A letter from Mr. Bruce Uthus, of Arlington, Va., to the editor of the Washington Sunday Star, was published on May 14, 1972. It expresses the views of many northern Virginians.

I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JETS AT NATIONAL

SIR: Two years ago the FAA administrator, John Shaffer, in exploitation of the air controllers "sickout," and under the guise of a so-called "study," took it upon himself to authorize the airlines to use the much larger, heavier and noiser 727 stretch-jets at National Airport. This cavalier action was taken without any knowledge, hearing, consultation or participation of the citizens of the community or the Congress. There was no consideration, study or report of the potential environmental or social impact which this action would impose on the affected local public.

Just a few weeks prior to Shaffer's precipitous action he had assured the Congress and the public as follows: "It is the position of the FAA that the Boeing 727-200 series aircraft should not be used in commercial service at Washington Airport."

The unheralded and sudden introduction of stretch-jets into Washington National Airport prompted an early congressional committee hearing on the matter, the report of which is most revealing. Among other things, the committee denounced Shaffer's unilateral action as "most alarming," and further that "the attitude of the FAA, toward the public and the Congress, is one of contempt rather than service."

Shaffer was asked by the committee, "How would the people on the ground along the Potomac Valley be affected by the introduction of the stretch-jet operation at National?" Whereupon Shaffer, who resides outside the sound cone of the Potomac flight paths, had the brazen effrontery to answer for the whole community and said: "The people along the Potomac will never know the difference between the stretch-jets and the regular 727." The arrogance and utter disregard of the public reflected in this statement is indicative of the attitude of the FAA from the time it ignored the protests of the public and authorized the initial use of jets at National in 1966 to the present.

PUBLIC IGNORED

The public has never been represented in arriving at these self-serving and cozy FAA airline-inspired decisions despite the drastic and important impact which these decisions have on the environment and mode of living of the affected residents in the Washington sector of the Potomac River Valley.

So today the airlines, with the dutiful and servile assistance of the captive FAA bureaucracy, are in fact the autocratic dictators of the environment in which the people in this area live. The result is that we live in a world of incessant jet noise and heavy air pollution. People along the National Airport flight paths cannot enjoy the Potomac River parks, their porches, balconies, patios, hi-fi's and, as Martha Mitchell recently pointed out to the press, normal conversation cannot be heard in our living quarters. Some of the casualties of this incessant deafening din were the things that made this a little more pleasant place to live, such as the Gadsby Theater, Watergate concerts and other outdoor theater activities.

When one steps out of the Kennedy cultural center onto the marvelous commodious balcony, with its inspiring views up and down the river, the roar of an overhead jet is killing. And, as one looks down at the Roosevelt Island bird sanctuary, one wonders how many can long live, as the island is constantly sprayed with the death-dealing visible and non-visible pollutants from climbing jets. In our frustration we ask why a proposed highway can be stopped dead in its tracks because highway authorities did not prepare and submit for public consideration studies of the environmental impact of the highway, and yet a highway in the sky can be created at once by a unilateral decision of a minor official of the federal government.

DULLES UNDERUSED

The residents of this community, as they wince at the deafening roar of overhead jets, must with great irony remember that to prevent just such pollution and environment the Congress and the public selected an excellent site, planned and built a truly jet-oriented airport at Dulles and at a cost of over 110 million taxpayers' dollars. The objectives of this action have been totally negated by airline-subservient bureau officials, and as a consequence we have to subsidize the under-utilized Dulles operation while National is saturated by jet traffic originally intended for Dulles. It just doesn't make sense.

Can anyone imagine the French or the English permitting the Seine in Paris or the Thames in London being used as a "bombing run" for commercial jets?

There have been "tons of complaints" by FAA's own admission. However, so far nothing has been done about them; nor has the Congress or the President, who publicly profess great interest and concern in reducing pollution and improving the environment, taken any steps to relieve the plight of the noise-tormented residents of this community.

Since the FAA is so obviously a captive bureau of the airlines, it will require superseding authority to overcome the havoc the FAA has wrought on our environment. The President or his Secretary of Transportation could quickly correct the situation by an order. Since such timely action has not been forthcoming, it is to the Congress we must look for corrective action.

BRUCE UTHUS.

ARLINGTON, VA.

GROUP TO INFORM PUBLIC ON WORKINGS OF CONGRESS

Mr. MATHIAS. Mr. President, a recent national public opinion poll showed only 26 percent of voting-age Americans expressing favorable opinions about Congress.

I believe the major reason for this low esteem is the fact that most Americans know too little about Congress and have a serious lack of understanding of how the legislative branch of their Government operates.

After all, how can one judge Congress fairly and objectively without a clear understanding of how it operates. It is my feeling, and one shared I am sure by all Senators, that Congress as an institution can be strengthened and improved by an increased public understanding of its responsibilities, its functions, and procedures.

I was pleased, therefore, to learn that a group of former Members of Congress and former congressional aides have organized the National Foundation to Increase Public Understanding of Congress.

An independent, nonpolitical, nonprofit, educational organization, the foundation is dedicated to making Congress better known to the people. Its aim is to develop a wholesome, interest in Congress on the part of the general public.

The foundation is the brainchild of Eric Smith, a onetime Associated Press editor, and a longtime student of Congress and the lawmaking process, who over the past 20 years served as a consultant to a number of Senators and House Members. Mr. Smith heads the foundation's staff as executive vice president.

Chairman of the foundation's broadly based board of directors is former Texas Representative Frank N. Ikard. President of the group is former Maryland Representative Richard E. Lankford.

The story of Congress and how it functions as an institution has never really been told. It is a story that needs telling and NFIPUC is not only needed, but essential at this time. Never in our history has Congress needed more the service NFIPUC will render in increasing public understanding of the national legislature and never has the public been in such need of information about the Congress and how it does its work.

I know I speak for all my colleagues in both Houses when I salute and commend the founders and supporters of NFIPUC. This effort is a most worthwhile public service and is deserving of the support of all who are interested in strengthening and improving the Congress.

The foundation has been assured the full cooperation of the Nation's radio/TV industry, daily newspapers and other print media, the motion picture industry, and other mass communications media. It plans to conduct programs and projects in all these media.

One of the projects the foundation has underway is a series of radio programs about Congress. I was privileged to be a guest on the first program which is devoted to the beginning of Congress, the congressional concept worked out at the constitutional convention of 1787 and the first Congress of 1789.

Since this is a matter of great interest to my colleagues, I ask unanimous consent to have printed in the RECORD the text of an announcement concerning this project.

There being no objection, the announcement was ordered to be printed in the RECORD, as follows:

RADIO SERIES TO EXPLAIN HOW CONGRESS OPERATES

WASHINGTON.—The National Foundation to Increase Public Understanding of Congress today announced plans for a series of 19 15-minute radio programs about Congress and how it operates.

Eric Smith, the Foundation's executive vice president, said the organization has received a public service grant from the Colgate-Palmolive Company to cover cost of broadcasting the series over 100 radio stations.

"The series," Smith pointed out, "starts with the Congressional concept as worked out at the Constitutional Convention of 1787 and the first Congress of 1789. It explains how Congress took its present form and how it operates today."

He said the programs would be hosted by